


**Revised Worker Protection  
Standard Regulation** (Rev. 2015)  
**What you need to know.....**  
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Department of Pesticide Regulation  
Regulatory and Public Services  
Clemson University  
Travis W. Vance  
Fisher & Phillips LLP 

August 2016

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**THANK YOU  
FOR YOUR COMMITMENT TO SAFETY**



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**The Man in the Arena**

“It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.”

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### Who Said That?

- A. Bill Clinton
- B. Ronald Reagan
- C. Teddy Roosevelt
- D. Dottie Ison

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**In March 2014, your farm in Huntingdon, WV was cited by OSHA for one serious violation of a Respirator Fit Testing standard and a serious violation of a personal protective equipment (PPE) standard. Both citations carry a proposed penalty of \$7,000.**

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At the informal conference Fed-OSHA offers you the following proposal:

- Reduce the PPE violation to Other than Serious and \$3,500
- Reduce the Respirator Fit Testing violation to Other than Serious and \$0

Do you accept Fed-OSHA's deal?

- A. Yes
- B. No

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### Relationship of EPA and OSHA

In the course of an EPA inspection, EPA personnel may identify safety concerns within the area of OSHA responsibility or may receive complaints about the safety or health of employees related to their working conditions.

In such instances, EPA will bring the matter to the attention of OSHA designated contacts in the Regional Office. EPA inspectors are not to perform the role of OSHA inspectors; however, they will refer worker health and safety issues to OSHA pursuant to the procedures set forth in this MOU and implementing agency directives. In the case of worker complaints, EPA will disclose the name of individuals to OSHA but will not further disclose the name and the identity of the employee. When such instances occur within OSHA State-plan States' jurisdiction, the OSHA Regional Office will refer the matter to the State for appropriate action.

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### Three Years Later – February 28, 2017 . . .

An OSHA Inspector (CSHO) is at the door, demanding to conduct an inspection of your Augusta, GA facility after receiving a referral from an EPA official who recently inspected your property.

Q. Do you have to allow this inspection?

- A. Yes
- B. No
- C. Maybe

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During the Opening Conference, the CSHO asks for/wants to see the following documents.

1. All new hire/orientation safety training for last five years;
2. Annual Training Records for Handlers;
3. Fit Tests for Respirator Wearers;
4. Pesticide Labeling Documents; and
5. Your MSDS (now SDS) sheets.

Do you give him all of these documents?

- A. Yes
- B. No

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**EPA's Worker Protection Standard - WPS**

**The WPS was** implemented in 1995 to protect agricultural workers from pesticide exposures in the agricultural workplace.

It's requirements are based on potential exposures to those engaged in the application of pesticides - *Ag Handlers*, and those who may be exposed to pesticide residues when then work on an ag establishment - *Ag Workers*.

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**EPA's Worker Protection Standard - WPS**

The WPS applies to agricultural establishments engaged in the **production of agricultural plants**.

The worker protection requirements of the WPS are to be fulfilled by agricultural employers to protect their employees.

The Revised WPS (2015) introduces some new and more rigorous safety requirements. With this comes some new terminology that you must understand.

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### The WPS is designed to

#### Inform

- ❖ Training
- ❖ Pesticide safety information
- ❖ Notification of pesticide applications
- ❖ Information exchange




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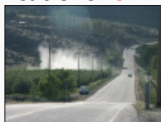
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### The WPS is designed to

#### Protect

- ❖ Restricted entry intervals - REIs
- ❖ Personal protective equipment - PPE
- ❖ Application exclusion zones – AEZs *new*
- ❖ Suspend applications *new*



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### The WPS is designed to

#### Mitigate

- ❖ Routine decontamination supplies
- ❖ Emergency eyewash
- ❖ Emergency assistance



Nearest Emergency Medical Facility is located at:

Name Farmhand Health Center  
 Street 49510 Farmhand Drive  
 City Farmhand  
 Phone 999-555-1212




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## WPS 101: Scope and Applicability

### Who is responsible for providing WPS protections?

- ❖ **Agricultural employers** on crop-producing agricultural establishments
- ❖ **Commercial pesticide handling establishment employers**

### Who is protected?

- ❖ **Workers** – people employed to perform work activities related to production of agricultural plants
- ❖ **Pesticide handlers** – people employed to mix, load or apply pesticides for use on agricultural establishments in the production of agricultural plants
- ❖ **Other persons** during pesticide applications

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## Pesticide Labeling and WPS

### Relationship Between Pesticide Labeling & WPS



Under \*FIFRA (section 12(a)(2)(G)), it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling”

When this part is referenced on a label, users must comply with all of its requirements, *except* those that are inconsistent with product-specific instructions on the pesticide product labeling.

\*FIFRA: Federal Insecticide Fungicide and Rodenticide Act 17

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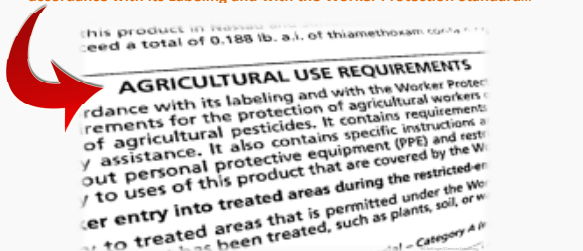
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## When do you have to comply with the Worker Protection Regulation?

Ag Use Requirements Box on product states “Use this product only in accordance with its Labeling and with the Worker Protection Standard...”




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### Revised WPS Compliance Deadlines

**January 2, 2017:**

- ❖ Annual training for workers and handlers. *There is no longer a no grace period.*
- ❖ New qualifications for trainers
- ❖ Training record keeping *(This was always a good idea!)*
- ❖ Minimum age for handlers and early entry workers (18)
- ❖ Medical evaluation, fit testing and training *before* use of respirators (Product labels calling for respiratory protection)
- ❖ Amounts of water available for decontamination & eyewash
- ❖ All requirements *EXCEPT FOR:* →




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### Revised WPS Compliance Deadlines

**January 2, 2018:**

- ❖ Handler suspend applications if a person is in the application exclusion zone [40CFR§170.505(b)]
- ❖ Additional training content for workers and handlers [40CFR§170.401(c)(3); 40CFR§170.501(c)(3)]
- ❖ New content for safety poster [40CFR§170.311(a)(3)]




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### Changes to WPS Rule Structure

40 CFR 170




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### Implementation Dates: 2017

#### 170.2 Implementation and expiration dates.

(a) **Implementation date.** Beginning January 2, 2017 requirements of §170.301 through §170.609 of this part shall apply to any pesticide product that bears the statement "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170".

(b) **Expiration date.** Sections 170.1 through 170.260 of this part shall expire on, and will no longer be effective after January 2, 2017 – the "old" WPS requirements.

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### Implementation Dates: 2018

❖ Sections 170.311(a)(3), 170.401(c)(3), 170.501(c)(3), and 170.505(b):

- ❖ The implementation date for these provisions is delayed until January 2, 2018
- ❖ The implementation date for ALL other WPS requirements is January 2, 2017

❖ Requirements in listed sections:

- ❖ Revised content of pesticide safety information
- ❖ New content for worker & handler training
- ❖ Handler *must* suspend application if worker(s) or other person(s) is in Application Exclusion Zone (AEZ)

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### WPS 101: Scope and Applicability

#### Keys to applicability of the WPS

- ❖ Use of a WPS-labeled pesticide product on an "agricultural establishment" directly related to the production of an "agricultural plant"
- ❖ Employment of workers or handlers
- ❖ Definitions of "agricultural establishment," "agricultural plant," and "employ" apply (these are important definitions to establishing the scope of rule)

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## Definitions 170.305

**Key Definitions & Revisions**

- Agricultural establishment and agricultural plant
- Application exclusion zone (AEZ)
- Commercial pesticide handler employer
- Designated representative
- Employ
- 'Enclosed space production' and 'outdoor production'
- Immediate family
- Safety data sheet-SDS – formerly called MSDSs
- Use - as in "to use a pesticide"

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## Definitions 170.305

- **Application exclusion zone** – a new concept

– *Application exclusion zone* means the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.



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
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## Application Exclusion Zone in Outdoor Production



When the application is concluded, the AEZ no longer exists.

 Field    AEZ    Spray Area    Treated Area (REI Area)



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### AEZs in Outdoor Production 170.405(a)(1)

- **100 foot AEZ**
  - Applied aerially, by air blast or with a spray quality smaller than medium
  - Applied as a fumigant, smoke, mist or fog
- **25 foot AEZ**
  - Applied other than above & sprayed from a height of >12 inches from planting medium with spray quality of medium or larger
- **No AEZ**
  - Applied otherwise




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### Protections During Applications in Outdoor Production

**Ag Employer's AEZ responsibilities:**

- Requirement (170.405(a)(2)): During an application, the agricultural employer *must* keep **workers and other persons** out of the **treated area and AEZ** that is WITHIN the boundary of the establishment owner's property
  - Who is responsible for compliance: **Ag employer**
  - Who is protected: Workers & other persons (besides protected handlers)
  - Is the protection limited to the boundaries of the ag establishment?  
**Yes**      *Effective Date for AEZ compliance 1/2/2017*




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### New Protections During Applications in Outdoor Production

**Handler's AEZ responsibilities:**

- Requirement (170.505(b)): Handlers must immediately **suspend a pesticide application** if any worker or other person (other than handler) is in AEZ (170.505(b))
  - Who is responsible for compliance: **Handler/applicator**
  - Who is protected: Workers & other persons (besides protected handlers)
  - Is the protection limited to the boundaries of the ag establishment? **No**      *Effective 1/2/2018*




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### Definitions 170.305

- **Safety data sheet (SDS)** (formerly MSDS)
  - *Safety data sheet* has the same meaning as the definition at 29 CFR 1900.1200(c).
  - *OSHA definition: Safety data sheet (SDS)* means written or printed material concerning a hazardous chemical that is prepared in accordance with paragraph (g) of this section.



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### WPS Training Requirements



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### Revised Training and Mitigation

- **Inform workers & handlers**
  - Training; establishment-specific info; knowledge of labeling & applications
- **Mitigate exposures**
  - Decontamination supplies including eyewash; emergency assistance
- **Protect workers & handlers**
  - Minimum age, PPE requirements



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### Training Interval and Grace Period Workers 170.401(a) and Handlers 170.501(a)

**Key Changes**

- Annual training for Workers and Handlers
- No grace period

**Implementation timing**

- **January 2017** all new training requirements will be fully enforceable – *EXCEPT* new content.
- **January 2018** new content required.



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### Content of Training

❖ Existing content kept and expanded

- Worker training has 23 items
- Handler training has 36 items
- Training on new content required 2 years from date of final rule  
→ projected date: January 2018



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### Minimum Age Requirement

- The WPS minimum age is 18 for Handlers and early entry workers



Minimum age provisions are found at:  
170.309(c): Ag employer duties  
170.313(c): Commercial pesticide handler duties  
170.605(a): Ag employer responsibilities to protect early-entry workers



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**WPS PPE Requirements** (170.507)

**General**  
**Chemical resistant PPE**  
**Contaminated PPE**  
**Respirator medical evaluation, fit testing, training & recordkeeping**


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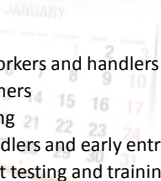

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**Review of WPS Revised Compliance Deadlines**

**January 2, 2017:**

- Annual training for workers and handlers - *no grace period*
- Qualifications for trainers
- Training record keeping
- Minimum age for handlers and early entry workers
- Medical evaluation, fit testing and training before use of respirators
- Amounts of water available for decontamination and eyewash
- All requirements EXCEPT FOR: →


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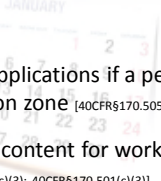

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**Citation 1 Item 1**      Type of Violation: **REPEAT**  
 29 CFR 1910.134(f). When an employee is required to use any respirator with a negative or positive pressure tight-fitting facepiece, the employee must be fit tested with the same make, model, style, and size of respirator that will be used. This paragraph specifies the kinds of fit tests allowed, the procedures for conducting them, and how the results of the fit tests must be used.

(a)      On or about February 28, 2017 and at times prior, the employer did not ensure that workers using respirators had been fit tested prior to use.

This is a repeat of an earlier citation for violation of 29 CFR 1910.134(f) following Inspection No. 12345678, of employer's Huntingdon, WV facility, which became a final order on March 15, 2014.

Date By Which Violation Must be Abated:    4/28/2017  
 Proposed Penalty:                                    \$126,000.00

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**OSHA Enforcement Update**

**SC OSHA**  
**Dottie Ison**  
**Harvey Jessup**

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**Contact Us!**  
*For more information on the revised WPS contact*

**Dept. of Pesticide Regulation**  
**864-646-2150**  
[www.clemson.edu/public/regulatory/pesticide\\_regulation/](http://www.clemson.edu/public/regulatory/pesticide_regulation/)

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